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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No. 1090

ARNOLD PAUL TRYON,
Appellant,

vs.

STATE OF IOWA,
Appellee.

ON APPEAL FROM THE SUPREME COURT OF IOWA

In Response to Appellant's Appeal from the Supreme Court of Iowa

APPELLEE'S MOTION TO DISMISS

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OPINION BELOW

There is no opinion from the Supreme Court of Iowa due to the fact that the case was dismissed because of appellant's defective notice of appeal. However, a copy of the final order by the Iowa Supreme Court, dismissing petitioner's appeal is attached hereto as Appendix "A".

JURISDICTION

Appellant claims jurisdiction for review by this Court arises under 28 U.S.C., Section 1257(2) or 28 U.S.C., Section 1257(3).

QUESTION PRESENTED

The appellant asks this Court to consider the issue of whether Sections 793.2 and 793.4, 1966 Code of Iowa, are repugnant to the Constitution of the United States when strictly construed by the Supreme Court of Iowa to dismiss the appellant's appeal.

STATEMENT OF THE CASE AND ARGUMENT

Appellant was charged with the crime of Resisting Execution of Process in violation of Section 742.1, 1966 Code of Iowa. After pleading not guilty to the above referred to charge, appellant was tried by a jury and found guilty on March 6, 1969. Sentence was pronounced on March 10, 1969, and appellant was fined Two Hundred ($200.00) Dollars plus the costs of the action.

On March 12, 1969, counsel for the appellant filed a Notice of Appeal to the Supreme Court of the State of Iowa, using the following language:

> "Comes now the defendant Arnold Paul Tryon, and in furtherance of Section 793.4 of the Code of Iowa (1966) hereby gives notice to the State of Iowa, through the County Attorney of Dickinson County, of the taking of an appeal from the *jury verdict* in this court." (Emphasis added).

On or about May 15, 1969, the State of Iowa filed a Motion to Dismiss appellant's appeal on the grounds that Section 793.2, 1966 Code of Iowa requires that an appeal can only be taken from a final judgment—not a jury verdict. On June 5, 1969, appellant filed a Resistance to the State's Motion to Dismiss. However, on June 9, 1969, the Iowa Supreme Court sustained the State's Motion to Dismiss and appellant's appeal was dismissed.

Thereafter the appellant filed an Application for Leave to Take a Delayed Appeal and a Request for Leave to Present Oral Argument. The State of Iowa filed a Resistance to said Application, and the matter was set down for oral argument before three justices of the Iowa Supreme Court on July 18, 1969. After oral argument the Iowa Supreme Court entered an Order denying the Application for Delayed Appeal. Appellant now appeals to and seeks relief in this Court.

Copies of the Notice of Appeal, Motion to Dismiss, Resistance to the Motion to Dismiss, Order Dismissing Appeal, Application for Leave to Take Delayed Appeal, Resistance to Application for Leave to Take Delayed Appeal and Notice of Appeal to the Supreme Court of the United States are attached hereto as Appendix "B".

Appellant asks this Court to consider the constitutionality of Sections 793.2 and 793.4, 1966 Code of Iowa, a copy of which is set forth in Appendix "C" hereto.

This Court has held on repeated occasions that this Court will not decide federal constitutional issues raised for the first time on review of state court decisions. This Court has no jurisdiction to consider such constitutional questions, unless a federal question was raised and decided in the state court below. The United States Supreme Court has consistently refused to decide federal constitutional issues raised in it for the first time on review of the state court decisions. *Safeway Stores, Inc.* v. *Oklahoma Retail Grocers Assn., Inc.*, 360 U.S. 334, 342, N. 7 (1959); *State Farm Mutual Automobile Ins. Co.* v. *Duel*, 324 U.S. 154, 160-163 (1945); *McGoldrick* v. *Compagnie Generale Transatlantique*, 309 U.S. 430, 434-435 (1940).

Furthermore, this Court has held that it is important that state courts be given the first opportunity to consider

applicability of state statutes in light of constitutional challenge, since the statutes may be construed in a way which saves their constitutionality. Or the issue may be blocked by an adequate state ground. *O'Connor* v. *Ohio*, 385 U.S. 92 (1966); *Cardinale* v. *Louisiana*, 394 U.S. 437.

Since the issue regarding the constitutionality of Sections 793.2 and 793.4, 1966 Code of Iowa was never argued before the Iowa Supreme Court, the United States Supreme Court lacks jurisdiction to consider appellant's contentions raised for the first time in this Court.

CONCLUSION

For all the above reasons appellee respectfully requests the appellant's appeal be dismissed.

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